(23,677)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 169.

RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED, PLAINTIFF IN ERROR,

vs.

WILLIAMSON MENEFEE, BY HIS NEXT FRIEND, MRS. EMMA W. MENEFEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 22, 1914.

a In the Supreme Court of the United States.

RIVERSIDE & DAN RIVER COTTON MILLS, INCORPORATED, Plaintiff in Error,
vs.
WILLIAMSON MENEFEE, by His Next Friend, Mrs. EMMA W. MENEFEE, Defendant in Error.

Petition for Writ of Error.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now the Riverside & Dan River Cotton Mills, Incorporated, petitioner, by its attorney, F. P. Hobgood, Jr., and complains that in the record and proceedings had in said cause, as also in the rendition of the judgment therein, in the Supreme Court of North Carolina at the Fall term, 1912, thereof, against said petitioner, manifest error hath happened to the great damage of said petitioner.

Wherefore said petitioner prays for the allowance of a writ of error and for an order fixing the amount of bond for costs in said cause.

An assignment of errors accompanies this petition.

Dated this 9th day of April, 1913.

F. P. HOBGOOD, JR.,
Attorney for Petitioner.

b In the Supreme Court of the United States.

RIVERSIDE & DAN RIVER COTTON MILLS, INCORPORATED, Plaintiff in Error,
vs.
WILLIAMSON MENEFEE, by His Next Friend, Mrs. EMMA W. MENEFEE, Defendant in Error.

Assignment of Errors.

Comes now the above-named plaintiff in error and files herewith its petition for a writ of error and says that there are errors in the record and proceedings in the above entitled cause and, for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment:

(1.) That the Supreme Court of North Carolina erred in holding valid and sufficient the service of summons within the State of North Carolina on T. B. Fitzgerald, a director of said plaintiff in error resident in said state but not transacting therein nor elsewhere any business for said plaintiff in error, said plaintiff in error

being a foreign corporation incorporated under the laws of the State of Virginia and having neither office nor place of business nor process agent nor property in the State of North Carolina and having been at no time engaged in business therein; the validity of said service of summons being drawn in question by said plaintiff in error on the ground of repugnancy to the Constitution of the United States and on the ground of being in contravention thereof.

(2.) That the Supreme Court of North Carolina erred in holding and deciding that said service of summons constituted due process of law as guaranteed by the fourteenth amendment to the Constitution of the United States.

(3.) That the Supreme Court of North Carolina erred in holding and deciding that the service of summons in said cause was sufficient to confer upon the court from which said summons issued, to-wit, the Superior Court of Alamance County, said state, jurisdiction of said plaintiff in error.

(4.) That the Supreme Court of North Carolina erred in holding and deciding that the service of summons in said cause was sufficient to confer jurisdiction upon the court from which said summons issued, to-wit, the Superior Court of Alamance County, said state, to hear and determine the matters and things in said cause involved.

(5.) That the Supreme Court of North Carolina erred in holding and deciding that sub-section one of section four hundred and forty of the Revisal of North Carolina of nineteen hundred and five, in so far as it provides that service of summons in an action by a citizen of the State of North Carolina against a foreign corporation is valid and sufficient where made upon a resident director of such foreign corporation, even though such corporation neither has property in the state nor does business in the state, is not in contravention of the provisions of the fourteenth amendment to the Constitution of the United States and that such service constitutes due process of law with respect to said plaintiff in error and that said sub-section does not deny to said plaintiff in error due process of law as guaranteed by said fourteenth amendment to the Constitution of the United States.

(6.) That the judgment of the Supreme Court of North Carolina in said cause constituted a denial to said plaintiff in error of due process of law as guaranteed by the fourteenth amendment to the Constitution of the United States.

For which errors said plaintiff in error prays that said judgment of the Supreme Court of North Carolina be reversed and judgment rendered in favor of said plaintiff in error and for costs.

F. P. HOBGOOD, JR.,
Attorney for Riverside & Dan River Cotton Mills, Incorporated, Plaintiff in Error.

d UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, or some of you being the highest court of law or equity of the said State in which a decision could be had in the said suit between Williamson Menefee, by his next friend, Mrs. Emma W. Menefee, plaintiff, and Riverside and Dan River Cotton Mills, Incorporated, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or
e statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Riverside and Dan River Cotton Mills, Incorporated, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 9th day of April, in the year of our Lord one thousand nine hundred and thirteen.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

EDWARD D. WHITE,
Chief Justice of the United States.

f RIVERSIDE & DAN RIVER COTTON MILLS, INCORPORATED, Plaintiff in Error,
vs.
WILLIAMSON MENEFEE, by His Next Friend, Mrs. EMMA W. MENEFEE, Defendant in Error.

Bond.

Know all men by these presents that the undersigned Riverside & Dan River Cotton Mills, Incorporated, as principal and the Fidelity & Deposit Company of Maryland as surety are indebted to Williamson Menefee in the sum of one thousand dollars to be paid to said Williamson Menefee, to which payment, well and truly to be made, they bind themselves jointly and severally by these presents.

Sealed and dated the third day of April, 1913.

Whereas the above-named plaintiff in error seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of North Carolina:

Now, therefore, the condition of this obligation is such that, if the above-named plaintiff in error shall prosecute its said writ of error to effect and answer all costs that may be adjudged if it shall fail to make good its plea, this obligation shall be null and void; otherwise, it shall remain and be in full force and effect.

RIVERSIDE & DAN RIVER COTTON MILLS, INC.,
[SEAL.] By H. R. FITZGERALD, *Treasurer.*
FIDELITY & DEPOSIT CO. OF MARYLAND. [SEAL.]
By E. D. BROADHURST, *Att'y-in-Fact.*

Attest:
C. L. WEILL, *Agent.*

Approved:
EDWARD D. WHITE,
Chief Justice of the United States.

g Supreme Court of North Carolina.

Certificate of Lodgment.

I, J. L. Seawell, Clerk of said Court, do hereby certify that there were lodged with me as such Clerk on April 11, 1913, in the matter of Riverside and Dan River Cotton Mills, Incorporated, plaintiff in error, against Williamson Menefee by his next friend Mrs. Emma W. Menefee, defendant in error;

1. The original bond, of which a copy is herein set forth.

2. Two copies of the writ of error as herein set forth,—one for the defendant in error and one to file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in Raleigh, North Carolina, this May 5, 1913.

[SEAL.]

J. L. SEAWELL,
Clerk Supreme Court of North Carolina.

h UNITED STATES OF AMERICA, *ss:*

To Williamson Menefee, by his next friend, Emma W. Menefee, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of North Carolina, wherein Riverside and Dan River Cotton Mills, Incorporated, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 9th day of April, in the year of our Lord one thousand nine hundred and thirteen.

EDWARD D. WHITE,
Chief Justice of the United States.

i GREENSBORO, N. C., April 12, 1913.

I, A. L. Brooks, attorney of record for the defendant in error, Williamson Menefee by his next friend, Mrs. Emma W. Menefee, hereby acknowledge due service of the within citation and the delivery to me of a copy thereof.

A. L. BROOKS.

1 Ninth District.

No. 332.

WILLIAMSON MENEFEE, by His Next Friend, Mrs. EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED, and MARYLAND CASUALTY COMPANY.

Appeal by Riverside and Dan River Cotton Mills, Incorporated.

In the Supreme Court, from Alamance County.

NORTH CAROLINA
Alamance County:

Be it remembered that heretofore, to-wit, on the 5th day of May, 1910, Williamson Menefee by his next friend, Mrs. Emma W. Menefee, sued out of the office of the Clerk of the Supreme Court of Alamance County, a summons in the words and figures following, to-wit:

Summons for Relief.

ALAMANCE COUNTY:

In the Superior Court.

WILLIAMSON MENEFEE, by His Next Friend, Mrs. EMMA W. MENEFEE,
against
DAN RIVER COTTON MILLS.

State of North Carolina to the sheriff of Rockingham county, Greeting:

You are hereby commanded to summon Dan River Cotton
2 Mills, the defendant above named, if it be found within your county, to be and appear before the Judge of our Superior Court, at a court to be held for the County of Alamance, at the Court House in Graham, on the 12th Monday after the first Monday of March, 1910, and answer the complaint that will be deposited in the office of the Clerk of the Superior Court for said county within the first three days of the term, and let the said defendant take notice that if it fail to answer said complaint within the term, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and of this summons make due return.

Given under my hand and seal of said court, this 5th day of May, 1910.

J. D. KERNODLE,
C. S. C. Alamance County.

Which said summons is endorsed:

Williamson Menefee by his next friend, Mrs. Emma W. Menefee, against Dan River Cotton Mills. Summons for Relief. Returnable to May Term, 1910, of the Superior Court of Alamance County. Received May 7th, 1910. Served May 9th, 1910. By leaving a copy of the within summons with Thos. B. Fitzgerald, a citizen of this county. Fee 60 cents. Mileage $1.00. $1.60. H. A. Clark, sheriff Rockingham County. J. W. Fagg, deputy sheriff. A. L. Brooks, plaintiff's attorney.

And now at said term of said court, to-wit: May Term, 1910, at the Court House in Graham before the Honorable W. J. Adams, judge presiding, said summons is returned endorsed as follows: "Received May 7, 1910. Served May 9, 1910, by leaving a copy of the within summons with Thos. B. Fitzgerald, a citizen of this county. Fee 60 cents. Mileage $1.00. $1.60. H. A. Clark, sheriff Rockingham County, J. W. Fagg, deputy sheriff.

Prior to the suing out of said summons, to-wit: On the 2d day of May, 1910, the following certificate was filed in the office of the Clerk of Superior Court of Alamance County:

3 And thereupon comes the said Williamson Menefee by his next friend, Emma W. Menefee, by his attorney, A. L. Brooks, and complains as follows:

Complaint.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1910.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
DAN RIVER COTTON MILLS.

The plaintiff, complaining of the defendant, alleges:

I. That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Virginia, with its principal office in the City of Danville, Virginia.

II. That the plaintiff is a citizen and resident of the State of North Carolina, residing with his father and mother in Alamance County, North Carolina, and that his mother, Emma W. Menefee, was duly appointed his next friend before the bringing of this suit, he being a minor without guardian.

III. That during the year 1909, and on or about the 1st day of June of said year, the said defendant was the owner of and engaged in running and operating a cotton mill for the purpose of manufacturing and finishing cotton goods.

IV. That on or about the first day of May, 1909, the plaintiff, being an inexperienced and untrained workman, applied to the

defendant company for a position in its mill, and accordingly was engaged by it and put at work upon a machine in said mill, at which it became his duty to put through the rollers of said machine and finish certain fabrics manufactured by the defendant, and at the time of the injury hereinafter complained of was then and there actually engaged in discharging his said duties as directed by the defendant company.

V. That the machine at which plaintiff was put to work was unsafe, defective and imperfectly constructed, some of the cogs in one of the wheels then and there being broken, causing the
4 said machine to run one-sided and irregular; that the said imperfection, defectiveness and unsafeness of said machine by inspection could have been, and was, known to the said defendant.

VI. That the plaintiff notified the defendant company and its agents of such defective condition, and requested that it remedy same. That the defendant, through its agents and servants, promised to remedy and repair the defectiveness in said machine and instructed this plaintiff to continue at work at same, but negligently and carelessly failed and refused to remedy such defects and imperfections.

VII. That the said plaintiff was assigned by the defendant to work in a very cramped position on said machine, pulling and keeping the edge of the cloth straight and regular as it passed through and between the rollers of same; that while in this position, on or about the first day of June, 1909, the defendant negligently and carelessly caused a faulty roll of bleached sheeting, in which there were holes, rough seams and bad places, to pass through the same, and the plaintiff while then and there engaged in his duty in attempting to put the same through the rollers of the said machine, without fault on his part, had his fingers caught in said faulty piece of cloth, causing his hand to be pulled between the rollers of said machine, badly crushing and mangling the fingers of his hand.

VIII. That the defendant company has been negligent in the performance of its duty owed to this plaintiff, in that it negligently and carelessly put him at work at a defective and improperly constructed machine, required him to work in a cramped and unsafe place and caused to be put through the said machine at which he was at work a faulty, uneven, seamy and defective piece of cloth, thereby greatly increasing the hazard of the employment, causing the plaintiff's hand to become entangled in same and injured, as above described. And failing to repair the machine as promised.

IX. That the injury to the plaintiff's hand was caused solely on account of the negligence of the defendant, as aforesaid, and without any fault or neglect on his part, by reason of which this plaintiff's hand has been injured and maimed for life, he
5 has suffered great agony and pain for many months and still suffers therefrom, and his capacity to earn a livelihood greatly diminished to his great damage in the sum of Nineteen Hundred and Ninety-nine Dollars ($1,999.00).

Wherefore, This plaintiff demands judgment in the sum of Nine-nteen Hundred and Ninety-nine Dollars (1,999), and for the cost of this action, and for such other and further relief as in good conscience he may be entitled to recover.

——— ———,
——— ———,
Attorneys for Plaintiff.

NORTH CAROLINA,
Alamance County:

Williamson Menefee, first being duly sworn, deposes and says: That he has read the foregoing complaint and that the same is true of his own knowledge, except as to such matters and things therein stated on information and belief, and as to it, he verily believes it to be true.

WILLIAMSON MENEFEE.

Sworn to and subscribed before me, this 31st day of May, 1910.
J. D. KERNODLE, *C. S. C.*

Thereafter, to-wit, at said August Term, 1910, comes the River-side & Dan River Cotton Mills, incorporated, by its attorneys, Morehead & Sapp, and enters a special appearance, and makes the following motion:

Special Appearance and Motion to Dismiss.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1910.

WILLIAMSON MENEFEE
against
DAN RIVER COTTON MILLS.

The Riverside and Dan River Cotton Mills, incorporated, sued in this action under the name of Dan River Cotton Mills enters a special appearance, for the purpose of setting side the service of the summons and for the dismissal of the action, or the reason that the Riverside and Dan River Cotton Mills, Inc., not sued by its proper name and that the service of the summons invalid and does not amount to due process of law.

——— ———.

In support of the foregoing motion the said Riverside & Dan iver Cottom Mills at said term files the following affidavit of H. R. itzgerald.

Affidavit.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1910.

WILLIAMSON MENEFEE, by His Next Friend, EMMA MENEFEE,
against
DAN RIVER COTTON MILLS.

H. R. Fitzgerald, being duly sworn, says, that he is now and was at the time of the alleged injury suffered by the plaintiff, Secretary and Treasurer of the Riverside and Dan River Cotton Mills, incorporated, and that R. A. Schoolfield is now and was at the commencement of the above entitled action, President of the Riverside and Dan River Cotton Mills, incorporated, and he is informed and believes that the plaintiff at the time he began his suit was under the impression that the said Riverside and Dan River Cotton Mills, incorporated, was called "Dan River Cotton Mills" and began his suit against the Dan River Cotton Mills.

Affiant is further informed and believes there is no such corporation as the Dan River Cotton Mills.

Affiant is further informed that the summons in this action was attempted to be served "by leaving a copy with Thos. B. Fitzgerald, a citizen and resident of this (Rockingham) County," as shown by the return of the sheriff of Rockingham county, North Carolina, and that this is the only return made by him.

7

The plaintiff's cause of action, if any he has, arose in the State of Virginia, where plaintiff was resident at that time.

The Riverside and Dan River Cotton Mills, incorporated, was incorporated under and by the laws of the State of Virginia and is a citizen and resident of Virginia. The said corporation's principal place of business is in Pittsylvania County, Virginia, and — does not transact business in the State of North Carolina and it has not nor ever has had an agent in the State of North Carolina, upon whom process in actions against it can be served as provided for in the statutes of North Carolina, nor has it ever been domesticated in said last named commonwealth.

H. R. FITZGERALD, *Affiant.*

Sworn to and subscribed before me this 4th day of June, 1910. Witness my hand and notarial seal.

F. EARNEST MURRIE, *N. P.*

Thereafter, to-wit, at September Term, 1910, said plaintiff sued out of the office of said clerk of said Superior Court of Alamance County a summons in the following words and figures:

Summons for Relief.

ALAMANCE COUNTY:

In the Superior Court.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED.

State of North Carolina to the sheriff of Rockingham County, Greeting:

You are hereby commanded to summon the Riverside and Dan River Cotton Mills, incorporated, the defendants above named, if they be found within your county, to be and appear before the Judge of our Superior Court, at a court to be held for the County of Alamance, at the Court House in Graham, on the 1st Monday in September, 1910, and answer the complaint that will be deposited in the office of the Clerk of the Superior Court for said county within the first three days of the term, and let the said defendants take notice that if they fail to answer said complaint within the Term, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and of this summons make due return.

Given under my hand and seal of said Court, this 1st day of June, 1910.

J. D. KERNODLE,
C. S. C., Alamance County.

Which said summons is endorsed:

William Menefee by his next friend, Emma W. Menefee, against Riverside and Dan River Cotton Mills, incorporated. Summons for relief returnable to September Term, 1910, of the Superior Court Alamance County.

And now at said term of said court, to-wit, September Term, 1910, the Court House in Graham, said summons is returned endorsed as follows: "Received 10th day of June, 1910. Served 17th day June, 1910, by reading and leaving copy of the within summons with Thos. B. Fitzgerald, a director of the defendant corporation. Fee 60 cents. Mileage $1.90. $2.50. H. A. Clark, sheriff Rockingham County. J. W. Fagg, deputy sheriff.

At said term of said court said Riverside and Dan River Cotton Mills, incorporated, by its counsel, Morehead & Sapp, entered a special appearance and made the following motion:

Special Appearance and Motion to Dismiss.

NORTH CAROLINA,
Alamance County:

In the Superior Court, September Term, 1910.

9 WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED.

In the above entitled action the defendant enters a special appearance for the purpose of making a motion to strike out the return of service in the above entitled action and moves the court to strike out the return of service in the above entitled action for the reason that the defendant is a foreign corporation, not doing business in North Carolina, and has not been domesticated and has no agent upon whom service can be made and that the service of the summons is invalid and does not amount to due process of law as against this defendant.

MOREHEAD & SAPP,
Attorneys for Defendant.

In support of said motion at said September Term, 1910, said Riverside and Dan River Cotton Mills, incorporated, filed the following affidavit:

Affidavit.

NORTH CAROLINA,
Alamance County:

In the Superior Court, September Term, 1910.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED.

H. R. Fitzgerald, being first duly sworn, says that he is now and has been since its organization, Secretary and Treasurer of the Riverside and Dan River Cotton Mills, incorporated, the above named defendant, and as such Secretary and Treasurer is familiar with the business of said Company; that the said Riverside and Dan River Cotton Mills, incorporated, is a corporation chartered
10 and doing business under and by virtue of the laws of the State of Virginia, and was incorporated on the 20th day of August, 1909, and is engaged in the manufacture of cotton goods and was at the time of the commencement of the above entitled action and before and since a citizen and resident of the State of Virginia, having its principal office in the County of Pittsylvania in

said State; that it did not have at the commencement of this action nor has it had at any time before or since any office or place of business of any kind in the State of North Carolina and was not at the commencement of this action or any time before or since engaged in business in the State of North Carolina; that it did not have at the commencement of this action nor has it had at any time since or before an agent in the State of North Carolina upon whom process in actions and proceedings against them can be served as provided for by the statutes of North Carolina and has not at any time been domesticated in the said State of North Carolina; that R. A. Schoolfield was at the time of the commencement of the above entitled action President of the defendant, and that H. R. Fitzgerald was at the time of the commencement of the above entitled action and is now Secretary and Treasurer of the defendant; that the plaintiff's cause of action, if any he has, arose in the State of Virginia where plaintiff was resident at that time; that this affiant is informed and believes that the summons in the above entitled action was served within the State of North Carolina upon T. B. Fitzgerald, one of the Directors of the defendant; that T. B. Fitzgerald, upon whom process in the above entitled action was served, was not at the time of the service, nor before, transacting the business of the corporation in the State of North Carolina.

H. R. FITZGERALD, *Affiant.*

Sworn and subscribed to before me, this 5th day of September, 1910.

JAMES T. CATLIN, *N. P.*

My commission expires 2nd day of March 1911.

Thereupon, to wit, at said September Term, 1910, comes
11 the plaintiff, by his attorney, A. L. Brooks, and complains as follows:

Complaint.

NORTH CAROLINA,
Alamance County:

In the Superior Court, September Term, 1910.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED.

The plaintiff, complaining of the defendant, alleges:

I. That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of Virginia, with its principal office in the City of Danville, Virginia.

II. That the plaintiff is a citizen and resident of the State of North Carolina, residing with his father and mother in Alamance County, North Carolina, and that his mother, Emma W. Menefee,

was duly appointed his next friend before the bringing of this suit, he being a minor without guardian.

III. That during the year 1909, and on or about the 1st day of May of said year, the said defendant was the owner of and engaged in running and operating cotton mills for the purpose of manufacturing and finishing cotton goods.

IV. That on or about the 1st day of May, 1909, the plaintiff, being an inexperienced and untrained workman, applied to the defendant company for a position in its mill, and accordingly was engaged by it and put to work upon a machine in said mill, at which it became his duty to put through the rollers of said machine and finish certain fabrics manufactured by the defendant, and at the time of the injury hereinafter complained of was then and there actually engaged in discharging his said duties as directed by the defendant company.

V. That the machine at which plaintiff was put to work
12 was unsafe, defective and imperfectly constructed, some of the cogs in one of the wheels then and there being broken, causing the said machine to run one-sided and irregular; that the said imperfection, defectiveness and unsafeness of said machine by inspection could have been, and was, known to the said defendant.

VI. That the plaintiff notified the defendant company and its agents of such defective condition, and requested that it remedy same. That the defendant through its agents and servants, promised to remedy and repair the defectiveness in said machine and instructed this plaintiff to continue at work at same, but negligently and carelessly failed and refused to remedy such defects and imperfections.

VII. That the said plaintiff was assigned by the defendant to work in a very cramped position on said machine, pulling and keeping the edge of the cloth straight and regular as it passed through and between the rollers of same; that while in this position, on or about the 1st day of May, 1909, the defendant negligently and carelessly caused a faulty roll of bleached sheeting, in which there were holes, rough seams and bad places, to pass through the same, and the plaintiff while then and there engaged in his duty in attempting to put the same through the rollers of the said machine, without fault on his part, had his fingers caught in said faulty piece of cloth, causing his hand to be pulled between the rollers of said machine, badly crushing and mangling the fingers of his hand.

VIII. That the defendant company has been negligent in the performance of its duty to this plaintiff, in that it negligently and carelessly put him at work at a defective and improperly constructed machine, required him to work in a cramped and unsafe place and caused to be put through the said machine at which he was at work a faulty, uneven, seamy and defective piece of cloth, thereby greatly increasing the hazard of the employment, causing the plaintiff's hand to become entangled in same and injured, as above described, and failing to repair the machine, as promised.

IX. That the injury to the plaintiff's hand was caused solely on

account of the negligence of the defendant, as aforesaid, and
13 without any fault or neglect on his part, by reason of which this plaintiff's hand has been injured and maimed for life, he has suffered great agony and pain for many months and still suffers therefrom, and his capacity to earn a livelihood greatly diminished to his great damage in the sum of Nineteen Hundred and Ninety-nine Dollars (1,999.00).

Wherefore, this plaintiff demands judgment in the sum of Nineteen Hundred and Ninety-nine Dollars ($1,999). and for the cost of this action, and for such other and further relief as in good conscience he may be entitled to recover.

A. L. BROOKS,
C. A. HALL,
Attorneys for Plaintiff.

NORTH CAROLINA,
Alamance County:

Williamson Menefee, first being duly sworn, deposes and says: That he has read the foregoing complaint and that the same is true of his own knowledge, except as to such matters and things therein stated on information and belief, and as to *it*, he verily believes it to be true.

WILLIAMSON MENEFEE.

Sworn to and subscribed before me, this 9th day of September, 1910.

J. D. KERNODLE, *C. S. C.*

Which said complaint is endorsed as follows: "Filed September 9th, 1910. J. D. Kernodle, C. S. C."

Thereafter, to-wit: At March Term, 1911, the following order was made by Honorable F. A. Daniels, judge presiding:

Order.

NORTH CAROLINA,
Alamance County:

In the Superior Court, March Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
DAN RIVER COTTON MILLS.

14 In this cause on motion of plaintiff's counsel it appearing to the court that the Maryland Casualty Company of Baltimore is a necessary party defendant. It is therefore ordered that summons be issued making the Maryland Casualty Company a party defendant in this case.

F. A. DANIELS,
Judge Presiding.

At May Term, 1911, said plaintiff sued out of the office of the clerk of said court a summons in the following words and figures

Summons for Relief.

ALAMANCE COUNTY:

In the Superior Court.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
MARYLAND CASUALTY COMPANY OF BALTIMORE.

State of North Carolina to the Sheriff of Wake County, Greeting:

You are hereby commanded to summon the Maryland Casualty Company of Baltimore, the defendant above named, if to be found within your county, to be and appear before the Judge of our Superior Court, at a court to be held for the County of Alamance, at the Court House in Graham, on the 29th day of May, 1911, and answer the complaint that will be deposited in the office of the Clerk of the Superior Court for said county within the first three days of the term, and let the said defendant take notice that if it fail to answer said complaint within the Term, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and of this summons make due return.

Given under my hand and seal of said court, this 18th day of March, 1911.

J. D. KERNODLE,
C. S. C., Alamance County.

15 And now at said term, to-wit, May Term, 1911, at the Court House in Graham said summons is returned endorsed as follows: "Received March 24th, 1911. Served March 24th, 1911 by delivering a copy of the within summons to James R. Young Insurance Commissioner of North Carolina, and paying him his fee of $1.00 receipt hereto attached, J. G. Sears, Sheriff Wake County, by H. H. Crocker, deputy sheriff.

At this May Term, 1911 of said court the following order was signed by the judge presiding.

Order.

NORTH CAROLINA,
Alamance County:

In the Superior Court, Mty Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED.

Upon motion of counsel for plaintiff it is ordered and adjudged that the Maryland Casualty Company of Baltimore be made a party

defendant to this action and it is further ordered that the Clerk of this Court issue a summons in this cause against the Maryland Casualty Company of Baltimore making it a party defendant to this action.

F. A. DANIELS,
Judge Presiding.

At said May Term, 1911, of said court comes the plaintiff by his counsel, A. L. Brooks, and complains as follows:

Amended Complaint.

NORTH CAROLINA,
Alamance County:

In the Superior Court, Spring Term, 1911.

16 WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED, and MARYLAND CASUALTY COMPANY.

The plaintiff complaining of the defendants allege:

I. That the defendant, the Riverside and Dan River Cotton Mills, Incorporated, is a corporation duly organized and existing under and — virtue of the laws of the State of Virginia, with its principal office in the City of Danville, Virginia.

II. That the defendant, the Maryland Casualty Company, is a corporation duly chartered and organized in the State of Maryland with its principal office in the City of Baltimore, and doing business in the State of North Carolina, in which last named state it has a duly authorized agent upon whom service of process may be had.

III. That the plaintiff is a citizen and resident of the State of North Carolina, residing with his father and mother in Alamance County, North Carolina, and that his mother Emma W. Menefee, was duly appointed his next friend before the bringing of this suit, he being a minor without guardian.

IV. That during the year 1909, on or about the 1st day of May of said year, the plaintiff, Williamson Menefee, was engaged as an operative in the mill of the Dan River Power and Manufacturing Company, and while so engaged at work was injured, as hereinafter more specifically set out.

V. That subsequent to the said injury and prior to the bringing of this suit, the defendant, Riverside and Dan River Cotton Mills, Incorporated, absorbed, purchased and took over all of the assets and assumed the liabilities of the Dan River Power and Manufacturing Company, as such successor is now the owner of all its assets.

VI. That the defendant, the Maryland Casualty Company, for a good and sufficient consideration, expressly contracted and agreed

to become responsible for and with the Dan River Power
17 and Manufacturing Company for any and all injuries sustained by its servants and employees and caused by its negligence during the year 1909.

VII. That the said Maryland Casualty Company by the terms of said contract is equally liable with its co-defendant, Riverside and Dan River Cotton Mills, Incorporated, for the injury for which the plaintiff herein complains, and expressly agreed with the Dan River Power and Manufacturing Company that during the year 1909 it would be responsible for and pay to any of its servants and employees all damages which they might sustain during said year on account of the negligence of the said Dan River Power and Manufacturing Company, and that it would defray the expense of such litigation incident to ascertaining the amount of said damage and assume the active defence of any and all suits brought for such purpose, thereby making it the real party in interest and responsible directly to this plaintiff.

VIII. That on or about the 1st day of May, 1909, the plaintiff, being an inexperienced and untrained workman, applied to the Dan River Power and Manufacturing Company for a position in its mills, and accordingly was engaged by it and put to work upon a machine in said mill, and it became his duty to put through the rollers of said machine and finish certain fabrics manufactured by said company, and at the time of the injury hereinafter complained of was then and there actually engaged in discharging his said duties, as directed by the Dan River Power and Manufacturing Company.

IX. That the machine at which plaintiff was put to work was unsafe, defective and imperfectly constructed, some of the cogs in one of the wheels then and there being broken, causing the said machine to run one-sided and irregular; that the said imperfection, defectiveness and unsafeness of said machine, by inspection, could have been, and was, known to the Dan River Power and Manufacturing Company.

X. That the plaintiff notified the Dan River Power and Manufacturing Company and its agents of such defective condition, and requested that it remedy same. That the said company, through its agents and servants, promised to remedy and repair the
18 defectiveness in said machine, and instructed this plaintiff to continue at work at same, but negligently and carelessly failed and refused to remedy such defects and imperfections.

XI. That the said plaintiff was assigned by the Dan River Power and Manufacturing Company to work in a very cramped position on said machine, pulling and keeping the edge of the cloth straight and regular as it passed through and between the rollers of same; that while in this position, on or about the 1st day of May, 1909, the said company negligently and carelessly caused a faulty roll of bleached sheeting, in which there were holes, rough seams and bad places, to pass through the same, and the plaintiff while then and there engaged in his duty in attempting to put the same through the rollers of said machine, without fault on his part,

had his fingers caught in said faulty piece of cloth, causing his hand to be pulled between the rollers of said machine, badly crushing and mangling the fingers of his hand.

XII. That the Dan River Power and Manufacturing Company was negligent in the performance of its duty owed to this plaintiff, in that it negligently and carelessly put him at work at a defective and improperly constructed machine, required him to work in a cramped and unsafe place and caused to be put through the said machine at which he was at work a faulty uneven, seamy and defective piece of cloth, thereby greatly increasing the hazard of the employment, causing the plaintiff's hand to become entangled in same and injured, as above described, and failing to repair the machine, as promised.

XIII. That the injury to the plaintiff's hand was caused solely on account of the negligence of the Dan River Power and Manufacturing Company, as aforesaid, and without fault or neglect on his part, by reason of which this plaintiff's hand has been injured and maimed for life, he has suffered great agony and pain for many months, and still suffers therefrom, and his capacity to earn a livelihood greatly diminished to his great damage in the sum of Nineteen Hundred and Ninety-nine Dollars.

Wherefore, this plaintiff demands judgment in the sum
19 of Nineteen Hundred and Ninety-nine Dollars, and for the cost of this action, and for such other and further relief as in good conscience he may be entitled.

A. L. BROOKS,
Attorney for Plaintiff.

NORTH CAROLINA,
Alamance County:

Williamson Menefee, first being duly sworn, deposes and says: That he has read the foregoing complaint and that the same is true of his own knowledge, except as to such matters and things stated therein on information and belief, and as to it, he verily believes it to be true.

WILLIAMSON MENEFEE.

Subscribed and sworn to before me this 22d day of April, 1911.
J. D. KERNODLE, *C. S. C.*

Also at said May Term, 1911, the following order is signed by Honorable F. A. Daniels, judge presiding.

Order of Consolidation.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED.

Upon motion of counsel for plaintiff in the above entitled action, it is ordered and adjudged that the two above entitled actions be and the same are hereby consolidated for trial as one action and that the amended complaint filed in the first above named action against the Riverside and Dan River Cotton Mills, Inc., and the Maryland Cacualty Company, of Baltimore be treated as the
20 complaint in this consolidated action. It is further ordered that the defendants be allowed sixty days in which to file their answers.

F. A. DANIELS,
Judge Presiding.

Special Appearance of Defendant.

The defendant enters special appearance and objects to the foregoing order of consolidation. Defendant excepts.

F. A. DANIELS,
Judge Presiding.

At said May Term, 1911, said Maryland Casualty Company enters a special appearance and makes the following motion.

Motion to Dismiss.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911,

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC.

The Maryland Casualty Company, of Baltimore, enters a special appearance in this cause, and moves the court:

I. That the Court strike out in so far as the Maryland Casualty Company, of Baltimore, is concerned, the amended complaint filed in this cause on April 22, 1911, for that no order has been made in said cause allowing the filing of said amended complaint, and for

that no order has been made in this cause, making the Maryland Casualty Company a party thereto, or ordering the issuance of summons against or service of summons upon said Maryland Casualty Company in this cause.

PARKER & PARKER,
Attorneys for Maryland Casualty Co.

Over-ruled and exception by defendant Maryland Casualty Company.

F. A. DANIELS.

21 Whereupon at said term the following facts were found by his Honor, Judge F. A. Daniels, presiding:

Finding of Facts.

NORTH CAROLINA,
Alamance County:

In the Superior Court, Spring Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC.

The Court finds the following facts upon a motion of Maryland Casualty Company to dismiss as to it:

1. That on May 5th, 1910, a summons was duly issued from this — in a cause entitled, "Williamson Menefee, by his next friend, Emma W. Menefee, vs. Dan River Cotton Mills," which summons was duly served May 9th, 1910, upon Thomas B. Fitzgerald, an alleged director of the defendant Cotton Mills.

2. That at the March Term, 1911, of the Superior Court of said county, that in said cause of Menefee vs. Dan River Cotton Mills referred to in the next preceding paragraph hereof, an order was made in words and figures as follows, to-wit:

"In this cause, on motion of plaintiff's counsel, it appearing to the Court that the Maryland Casualty Company of Baltimore, is a necessary party defendant:

It is therefore ordered that summons be issued making the Maryland Casualty Company a party defendant in this cause.

F. A. DANIELS,
Judge Presiding."

3. That under said order there was issued on March 18th, 1911, a summons for relief in a cause entitled, "Williamson Mene-
22 fee, by his friend, Mrs. Emma W. Menefee, vs. Maryland Casualty Company of Baltimore," which summons was duly served on March 24th, 1911, in the manner prescribed by statute providing for service upon a foreign corporation.

F. A. DANIELS,
Judge Presiding.

At said May Term, 1911, His Honor, Judge F. A. Daniels, found the following facts upon motion of the Riverside and Dan River Cotton Mills, Incorporated, upon a special appearance to dismiss for want of due service of process:

Findings of Facts.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC.

The Court finds the following facts; upon a motion to dismiss for want as of due service of process.

1. The defendant, the Riverside and Dan River Cotton Mills, is a corporation, non-resident, a citizen of the State of Virginia, with its principal place of business in Danville, Virginia.

2. The said corporation did not have at the commencement of this action nor has it now any office or place of business in the State of North Carolina, and was not at the commencement of this action nor at any time before or since engaged in business in the State of North Carolina.

3. Defendant did not have at the commencement of this action nor since or before, a process agent in the State of North Carolina, upon whom process in actions and proceedings against it can be served as provided for by the statute of North Carolina, nor has it at any time been domesticated in the State of North Carolina.

23 4. That T. B. Fitzgerald, one of the directors of the defendants, and upon whom the summons was served, was not at the time of the service nor before transacting the business of the corporation in the State of North Carolina and as a resident and citizen of North Carolina.

5. That the defendant corporation has no property in the State of North Carolina.

6. That said T. B. Fitzgerald holds no other office in the corporation.

F. A. DANIELS,
Judge Presiding.

At said May Term, 1911, the following order over-ruling said Riverside and Dan River Cotton Mills, Incorporated, motion to dismiss was made by His Honor, Judge F. A. Daniels:

Order Disallowing Appellant's Motion to Dismiss.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC.

This cause coming on to be heard at this Term upon motion to dismiss (made upon special appearance) for want of proper service. And the Court having found the facts and filed the same as part of the record.

It is ordered, That the motion be not allowed and the Court refuses to dismiss.

F. A. DANIELS,
Judge Presiding.

24

Exception.

The defendant excepts to the above ruling and the exception is duly noted.

Defendant is allowed to answer over and the time for answering is enlarged till the 1st of August next.

F. A. DANIELS,
Judge Presiding.

Thereafter, to-wit, at said May Term, 1911, comes the Riverside nd Dan River Cotton Mills, incorporated, by its counsel Morehead Sapp and files the following answer:

Answer of Riverside and Dan River Cotton Mills, Inc.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
IVERSIDE AND DAN RIVER COTTON MILLS, INC., and MARYLAND CASUALTY COMPANY.

The defendant Riverside and Dan River Cotton Mills, Inc., for nswer to such allegations of the complaint as are directed against says:

1. Paragraph 1 is admitted.
2. That upon information and belief, paragraph 3 is admitted.

3. The plaintiff on or about the first day of May, 1909, was engaged as an operative in the mill of the Dan River Power and Manufacturing Co., the other allegations contained in paragraph 4 of complaint are untrue.

4. Paragraph 5 is admitted.

25 5. It is admitted that -he plaintiff as employee at the time of the alleged injury was engaged in guiding through certain rollers, certain finished fabrics. All else in paragraph 8 of complaint is denied.

6. Each and every allegation of paragraph 9 of complaint is denied.

7. The allegations of paragraph 10 of the complaint are untrue.

8. No allegation made in paragraph 11 of complaint is true.

9. Paragraph 12 of complaint is denied.

10. The allegations made in paragraph 13 of the complaint are not true.

The defendant further answering plaintiff's complaint and as a further defence thereto alleges:

1. That it was not guilty of carelessness, negligence or improper conduct, as alleged in the complaint, and avers that the injury therein described, if any there was, was caused solely by the fault, carelessness and negligence of the plaintiff himself as follows, viz: Plaintiff's work was in the Finishing Department and it was his duty to attend the doubling machine, which was in good order and the kind in general and common use. The weaving of the cloth has been completed when it reached the Department in which plaintiff was working, and it is brought there to be inspected, calendered, doubled and folded. The cloth comes from the calendar machine folded in large rolls; it is then transferred to the doubling machine where it passes over a series of tension bars, then runs over a triangle and then passes between a pair of rubber covered rollers and doubled once and then over a second triangle and doubled again; that the triangle and rollers of this machine are open to view and above the floor of the room and about seven inches in diameter. In revolving they turn towards one another and the cloth passes between them and is drawn through by the contact with the revolving rollers. In order for the machine to do proper work, it is necessary that

26 the edges of the cloth shall be kept on the same line continually even with one another. The duties of the plaintiff were simply to catch the cloth above the rollers when necessary to bring the edges of the folds on the same line with one another, and he had no other duty except if it became necessary for any cause to start or stop the machine and this was done with a lever that was in reach of the plaintiff and which was in no way dangerous. It was the duty of the plaintiff, when necessary to bring the edges of the cloth together in order to have it pass through the rollers, with the folds on the same line with one another, to take hold of the cloth from six inches to a foot and a half above the rollers. Plaintiff had been cautioned not to handle the cloth as low as the rollers or to permit his fingers to pass in between. Plaintiff caught hold of the cloth above the rollers and then carelessly and negligently turned

around and looked back and away from his work and carelessly and negligently permitted his hand to follow the cloth into the rollers while he had his eyes off of his work and was -ooking around at something unconnected with his duties; and solely because of this carelessness and negligence on the part of the plaintiff he allowed his fingers to be carried into the rollers and injured, if injured at all; and solely because of the negligence and carelessness on the part of the plaintiff and not because of any carelessness or negligence on the part of the defendant was this plaintiff injured, if injured at all.

2. The defendant avers that the plaintiff was of sufficient age and mental capacity to see and understand any and all dangers connected with the performance of the duties to which he was assigned, and especially the danger of permitting his fingers to follow the cloth into the rollers; that the triangle, the cloth and the rollers of the machine were open and in full view of the plaintiff and the danger of allowing his fingers to follow the cloth into the rollers was obvious and apparent. Plaintiff was of sufficient age and mental capacity and had had sufficient experience in running said machine and in doing this work to fully understand and know that this was dangerous and defendant avers that plaintiff assumed the risk incident thereto.

Wherefore, The defendant asks judgment that he go without day and recover his costs and for such other and further relief he may be entitled to.

OSCAR L. SAPP,
JAMES T. MOREHEAD,
Attorneys for Defendant.

H. R. Fitzgerald, being duly sworn, says, that he is Secretary and Treasurer of the Riverside and Dan River Cotton Mills, Inc., the defendant in the above entitled action, and as such Secretary and Treasurer he is familiar with the business of said defendant; that he has heard the foregoing answer, read and knows the contents thereof, that it is true of his own knowledge, except as to matters stated on information and belief and as to these he believes it to be true.

H. R. FITZGERALD.

Sworn to and subscribed before me this 19th day of June, 1911.
LARALETTE TINSLEY, *N. P.*

At said May Term, 1911, the Maryland Casualty Company, by its counsel, Parker & Parker, enters a special appearance and lodges the following motion to dismiss:

Motion to Dismiss.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC.

28 The Maryland Casualty Company, of Baltimore, enters a special ap*e*parance in this cause and moves to dismiss the said cause as to it upon the following grounds, to-wit:

1. That there is no finding in this cause binding upon said Maryland Casualty Company, that it is either a necessary or proper party to this action, and that there was nothing before the court upon which to base such finding at the time the order was made directing the making of said Maryland Casualty Company a party to this action, and directing the issuance of summons against and service of summons upon it.

2. That said Maryland Casualty Company is not either a necessary or proper party to this action, and was not so at the time of the making of the order directing the issuance of summons against and service of summons upon it.

3. That the Maryland Casualty Company is neither a proper or necessary party to this action for that the Riverside and Dan River Cotton Mills, incorporated, is not properly before the court, and for that the Dan River Power and Manufacturing Company is not made a party to this action.

4. For that in this action there is no bond for costs nor has there been any order made for leave to sue without bond.

5. For that no order has ever been made in this case, making the Maryland Casualty Company, of Baltimore, a party thereto, or directing the issuance or service of summons in this cause.

PARKER & PARKER,
Attorneys for Defendant.

Over-ruled and exception by the Maryland Casualty Company.

F. A. DANIELS,
Judge Presiding.

Thereafter, to-wit, on the 29th day of July, 1911, said plaintiff sued out of the office of the Clerk of said Superior Court of Alamance County, a summons in the following words and figures:

29 *Summons for Relief.*

NORTH CAROLINA,
Alamance County:

In the Superior Court.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC., and MARYLAND CASUALTY COMPANY.

State of North Carolina to the Sheriff of Wake County, Greeting:

You are hereby commanded to summon Maryland Casualty Company the defendant above named, if it be found within your county, to be and appear before the Judge of our Superior Court, at a court to be held for the County of Alamance at the Court House in Graham, on the first Monday of September, 1911, and answer the complaint that will be deposited in the office of the Clerk of the Superior Court for said county within the first three days of the term, and let the said defendant take notice that if it fail to answer said complaint within the Term, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and of this summons make due return.

Given under my hand and the seal of said Court, this 29th day of July, 1911.

J. D. KERNODLE,
C. S. C., Alamance County.

And now at August Term, 1911, at the Court House in Graham, said summons is returned endorsed as follows: "Received August 21, 1911. Served August 21, 1911, by delivering a copy of the within summons to James R. Young, Insurance Commissioner of North Carolina and paying him his fee of $1.00 receipt hereto attached. J. H. Sears, Sheriff Wake County, by H. H. Crocker,
30 deputy sheriff. Sheriff's fee 60 cents paid."

Thereafter, to-wit, on the 11th day of September, 1911, comes the Maryland Casualty Company, by its counsel, Parker & Parker, and files as of May Term, 1911, the following answer:

Answer.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1911.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC., and MARYLAND CASUALTY COMPANY.

The defendant, Maryland Casualty Company, answering the Complaint filed against it in the above entitled cause, to-wit, says:

I. That the allegations of Article I of the Complaint are admitted.

II. That the allegations of Article II of the Complaint are admitted.

III. That the allegations of Article III of the Compalint are admitted.

IV. That as to the allegations of Article IV of the Complaint, this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

V. That as to the allegations of Article V of the Complaint this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

VI. That as to Article VI of the Complaint and the allegations therein contained, this defendant admits that it issued to the Dan River Power and Manufacturing Company an insurance policy known as "Employers' Liability Insurance" and that subject
31 to the conditions and limitations expressed in said policy, it agreed to indemnify the said Dan River Power and Manufacturing Company from certain claims for injuries sustained by certain of its servants and employees alleged to be caused by the negligence of the Dan River Power and Manufacturing Company during the year 1909. The allegations of said Article, not above admitted are denied.

VII. That as to the allegations of Article VII of Complaint, this defendant admits that it issued to the Dan River Power and Manufacturing Company a policy of insurance known as "Employers' Liability Insurance" for the year 1909, and that under the terms of said policy this defendant was to indemnify said Dan River Power and Manufacturing Co., from claims for damages for injuries sustained by its employees, subject to the conditions and limitations in said policy and that under certain conditions the said Maryland Casualty Co., was to have charge of litigation in resisting claims for damages and was to defray the expense of such litigation; but all possible liability on the part of this defendant for injuries sustained by employees of the Dan River Power and Manufacturing Company were subject to the conditions and limitations fully set out in said policy of insurance. All allegations of said Article, not herein admitted, are denied.

VIII. That as to the allegations of Article VIII of Complaint, this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

IX. That as to the allegations of Article IX of Complaint this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

X. That as to the allegations of Article X of Complaint, this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

XI. That as to the allegations of Article XI of Complaint, this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

XII. That as to the allegations of Article XII of Complaint, this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

32 XIII. That as to the allegations of Article XIII of Complaint, this defendant has not knowledge or information sufficient to form a belief, and therefore denies the same.

And now, having fully answered the Complaint of plaintiff, this defendant prays that it be hence dismissed without day and recover its costs to be taxed by the Clerk.

PARKER & PARKER,
J. LAURENCE JONES,
Attorneys for Defendant Maryland Casualty Co.

STATE OF MARYLAND,
City of Baltimore:

F. Highlands Burns, being duly sworn, deposes and says:

That he is Vice-President of the Maryland Casualty Company; that he has read the foregoing answer, and that the same is true of his own knowledge, save as to matters and things therein stated on information and belief, and as to them, he verily believes it to be true.

F. HIGHLANDS BURNS.

Sworn to and subscribed before me, this the 26th day of August, 1911.

JNO. F. NEUSCHAEFER, *N. P.*

My commission expires 10th day of May, 1912.

At June Term, 1912, of Alamance Superior Court held at the Court House in Graham, before the Honorable Frank Carter, Judge presiding, and a jury duly sworn and empanelled, this cause was tried and the following issues submitted to the jury:

Issues.

NORTH CAROLINA,
Alamance County:

In the Superior Court, June Term, 1912.

WILLIAMSON MENEFEE
VS.
COTTON MILLS CO.

1. Was the plaintiff injured by the negligence of the de-
33 fendant, as alleged in the Complaint?
2. Did the plaintiff contribute to his own injury, as alleged in the answer?
3. What damage, if any, is plaintiff entitled to recover?
For their verdict the jury answered the first issue "Yes." the second issue "No", and the third issue "$1,800.00".

Minute Docket Entries.

Defendant Riverside and Dan River Cotton Mills, incorporated, moves to set aside verdict and for a new trial. Motion overruled and defendant excepts. Judgment. Defendant excepts and appeals to Supreme Court. Notice of appeal given and waived in open court. Appeal bond is fixed by the Court at the sum of $35.00. By consent of parties given in open court, defendant is allowed 60 days in which to serve statement of case on appeal, and plaintiff is allowed 60 days thereafter to serve counter-case or file exceptions thereto.

CARTER, *Judge.*

Judgment.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1912.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC.

This cause coming on to be heard before the undersigned, Judge, and a jury, and the said jury having answered the issues submitted to them as follows, to-wit: That the plaintiff Williamson Menefee was injured by the negligence of the defendant, did not contribute to his injury, and that he had thereby, on account of said injuries sustained damages in the sum of $1,800.00.
34 It is therefore, on motion of A. L. Brooks, Attorney for plaintiff, ordered, Adjudged and Decreed;

That the plaintiff have and recover of the defendant Riverside and Dan River Cotton Mills Company, Incorporated, the sum of $1,800.00 damages and the costs of this action to be taxed by the Clerk.

FRANK CARTER,
Judge Presiding.

Case on Appeal.

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1912.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE, against
RIVERSIDE AND DAN RIVER COTTON MILLS, INC., and MARYLAND CASUALTY COMPANY.

This action was tried at the May Term, 1912, of Alamance Superior Court upon issues raised in the amended complaint and answer thereto His Honor, Judge Carter, presided. The action was first begun erroneously naming the Dan River Cotton Mills as defendant and again calling the defendant the Dan River Power and Manufacturing Company and finally the Riverside and Dan River Cotton Mills, Incorporated, which is the proper name of the defendant; and afterwards the Maryland Casualty Company was brought into the suit as a defendant. Each and every of the summonses was attempted to be served upon the defendant company by leaving a copy thereof with T. B. Fitzgerald, a director of the Company residing at the time of the service and since in Rockingham County, as appears by the record. The defendant is a Virginia corporation.

The action was begun by the plaintiff for alleged injuries received by him while he was employed by the Dan River Power and Manufacturing Company which since the time of the alleged in-
35 jury has been merged in the defendant Riverside and Dan River Cotton Mills, Incorporated, the plaintiff being at that time twenty years of age.

The defendant at the return term of each summons entered a special appearance and filed motions to strike out the return of the service of the summons and to dismiss the action upon the ground that the defendant is a foreign corporation not doing business in North Carolina, not having been domesticated and having no agents within the state upon whom service could be made under the statute, its contention being that the service of the summons was invalid and did not amount to due process of law against the defendant. His Honor, Judge Daniels, heard the motion and after considering the summons and the return of the sheriff thereon and affidavits filed and admissions made found the following facts at May Term, 1911:

1. "The defendant, Riverside and Dan River Cotton Mills is a corporation, non-resident, a citizen of the State of Virginia, with its principal place of business in Danville, Virginia.

2. "The said corporation did not have at the commencement of this action nor has it now any office or place of business in the State of North Carolina and was not at the commencement of this action nor at any time before or since engaged in business in the State of North Carolina.

3. "The defendant did not have at the commencement of this action nor since or before a process agent in the State of North Carolina upon which process in actions and proceedings against it can be served as provided for by the statute of North Carolina nor has it at any time been domesticated in the State of North Carolina.

4. "That T. B. Fitzgerald, one of the directors of the defendant company and upon whom the summons was served was not at the time of the service nor before transacting the business of the corporation in the State of North Carolina and was a resident
36 and citizen of North Carolina.

5. "That the defendant corporation has no property in the State of North Carolina.

6. "That the said T. B. Fitzgerald holds no other office in the corporation".

His Honor adjudged the service of the summons proper and valid and refused to strike out and dismiss the action, to which refusal the defendant Riverside and Dan River Cotton Mills, Inc., excepted and had an entry of the same made.

First Exception.

At the instance of the plaintiff the Maryland Casualty Company was made a party defendant and plaintiff filed an amended complaint against this defendant and said Maryland Casualty Company at May Term, 1911, to which the defendants filed separate answers at said term.

The issues, as set out in the record, were submitted to a jury empannelled to try the same. The plaintiff, who is now twenty two years of age, testified in his own behalf and the defendant Riverside and Dan River Cotton Mills, Inc., introduced testimony in its behalf.

At the conclusion of the plaintiff's testimony the defendant Maryland Casualty Company moved for judgment of non-suit, which said motion his Honor sustained, dismissing the action as to said Maryland Casualty Company.

The jury answered the issues in favor of the plaintiff, as set out in the record. The plaintiff moved for judgment upon the verdict and the defendant Riverside and Dan River Cotton Mills, Inc., moved for a new trial. Motion of said defendant denied and judgment signed as set out in the record. The defendant Riverside and Dan River Cotton Mills, Inc., excepted and appealed in open court from the judgment to the Supreme Court, its assignment of errors to be made in the case on appeal.

37 *Second Exception.*

The undertaking on appeal was fixed by the court at $35.00 and was given. By consent the defendant was allowed sixty days in which to serve statement of case on appeal and the plaintiff sixty days after service of statement of case on appeal in which to return the same with exceptions or counter-case.

Assignment of Errors.

The defendant Riverside and Dan River Cotton Mills, Inc., assigns for errors:

1. The ruling of the court at May Term, 1911, that the service of summons on T. B. Fitzgerald is a proper and valid service and refusing to dismiss the action. (Defendant's first exception).

2. The action of the court, as appears upon the face of the record, in allowing the reading in the presence and hearing of the jury of the plaintiff's amended complaint charging the Maryland Casualty Company with liability to him and in retaining said Maryland Casualty Company as a party to this action during a large part of the trial, to-wit: until the close of the plaintiff's testimony.

3. The action of the court in granting and signing the judgment set out in the record.

SAPP & WILLIAMS,
F. P. HOBGOOD, JR.,
MOREHEAD & MOREHEAD,
Attorneys for Appellant.

The following statement of case is agreed to. But I do not agree to the facts stated in the Assignments of Errors, or that they are errors as assigned.

A. L. BROOKS,
Attorney for Plaintiff.

August 23, 1912.

38 *Undertaking on Appeal.*

NORTH CAROLINA,
Alamance County:

In the Superior Court, May Term, 1912.

WILLIAMSON MENEFEE, by His Next Friend, EMMA W. MENEFEE,
against
RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED, and MARYLAND CASUALTY COMPANY.

Whereas at May Term, 1912, of Alamance Superior Court, judgment was rendered in the above entitled cause against the defend-

ant, Riverside and Dan River Cotton Mills, Incorporated, and in favor of the plaintiff in the sum of eighteen hundred dollars and for costs, from which said judgment said defendant in open court appealed to the Supreme Court of North Carolina:

Now, therefore, the undersigned Riverside and Dan River Cotton Mills, as principal and R. G. Glenn as surety undertake in the sum of thirty-five dollars that said Riverside and Dan River Cotton Mills, Incorporated, will pay all costs which may be awarded against it on said appeal.

In testimony whereof said Riverside and Dan River Cotton Mills, Incorporated, has executed these presents and the said R. G. Glenn has hereto set his hand on this, the 26th day of July, 1912.

RIVERSIDE AND DAN RIVER
COTTON MILLS, INC.,
By F. P. HOBGOOD, JR., *Attorney.*
R. G. GLENN.

NORTH CAROLINA,
Guilford County:

R. G. Glenn, being sworn, says that he is worth the sum of thirty-five dollars over and above all his liabilities and the exemptions allowed by law.

R. G. GLENN.

39 Subscribed and sworn to before me on the 27th day of August, 1912.

A. L. BAIN,
Notary Public.

NORTH CAROLINA,
Alamance County:

I, J. D. Kernodle, Clerk of the Superior Court in and for the County and State aforesaid, do hereby certify that the foregoing is a true and correct transcript of the record in the case of Williamson Menefee by his next friend, Mrs. Emma W. Menefee, against Riverside and Dan River Cotton Mills, Incorporated, and Maryland Casualty Company as the same is taken from and compared with the original now on file in this office.

Witness my hand and the seal of said court on the — day of August, 1912.

[OFFICIAL SEAL.] J. D. KERNODLE,
C. S. C., Alamance County.

40 *Docket Entries.*

Appeal docketed September 17, 1912; Argued October 22, 1912. Opinion by Clark, C. J., filed December 20th, as follows:

Supreme Court of North Carolina, Fall Term, 1912.

#332. Alamance.

WILLIAMSON MENEFEE
v.
RIVERSIDE AND DAN RIVER COTTON MILLS.

A. L. Brooks and C. A. Hall, for plaintiff.
Morehead & Morehead, Sapp & Williams and F. P. Hobgood, Jr., for defendant.

CLARK, *C. J.:*

This is an action for damages for personal injuries. The defendant entered a special appearance and moved to strike out the return of the service of the summons for the reason that "the defendant is a foreign corporation not doing business in North Carolina, and has not been domesticated and has no agent upon whom service can be made, and the service is invalid and does not amount to due process of law". The motion was overruled and the defendant excepted. The defendant then answered and the cause was tried upon its merits. From the verdict and judgment the defendant appealed.

The Court found as a fact that the defendant is a Virginia corporation and did not have at the commencement of this action and has not now any office or place of business in this State, and has never engaged in business here; that it has never had a process agent in this State nor been domesticated here; that T. B. Fitzgerald upon whom the summons was served is a director of the defendant company and is a resident of this State, but that he was not at the time of the service nor at any time prior thereto transacting the business of the company and held no office therein other than that of director and that the defendant has no prop-
41 erty in this State. Rev. 1905, sec. 440 (1) provides as to service of summons: "If the action be against a corporation, to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof; * * * but such service can be made in respect to a foreign corporation only when it has property within this State, or the cause of action arose therein, or when the plaintiff resides in the State, or when such service can be made within the State, personally upon the president, treasurer or secretary thereof." The construction of this Statute which has been uniformly followed in Cunningham v. Express Co., 67 N. C. 426 and all cases since, is thus stated by Hoke, J. in Whitehurst v. Carr, 153 N. C. 76: "Construing a statute of similar import, it has been held that the first clause enumerates

the persons on whom service of process can be made, to-wit: on the president or other head of the corporation, secretary, Treasurer, director, managing or local agent thereof, and in that respect applies to all corporations, both domestic and foreign. Then follows the proviso as to who shall be considered local agents for the purpose of the section, and the last clause establishes certain conditions, restrictive in their nature, which are required and necessary to a proper and valid service on foreign corporations. That is, service on the persons designated in the first clause shall only be good as to foreign corporations: (1) when they have property in the state, or (2) when the cause of action arose therein or (3) when the plaintiff resides in the State. And then a fourth method is established (4) when service can be made within this State personally on the president, treasurer or secretary thereof."

This construction has been held also in McDonald v. McArthur, 154 N. C. 122; Higgs v. Sperry, 139 N. C. 299; Greenleaf v. Bank, 133 N. C. 292; Jester v. Steam Packet Co., 131 N. C. 54; Clinard v. White, 129 N. C. 561; Jones v. Ins. Co. 88 N. C. 499. The plaintiff was at the time of his injury and before and since a citizen and resident of North Carolina and relying upon the above
42 decisions brought his action in this State. Should he now begin an action in Virginia he would probably be barred by the statute of limitations.

The Court in Cunningham v. Express Co. 67 N. C. 426 thus construed this last clause of the section: "The several cases respecting the foreign corporations, it will be observed, are put disjunctively, and we think that the meaning is that in either of the three cases service may be made by delivery of a copy of the summons to one of the officers named in the first clause of the section, among which is the managing agent." At that time the word "director" was not in the section but it has been added since. It is only when neither of these three conditions exist that the service is required to be made "upon the president, secretary or treasurer thereof."

The defendant relies upon two cases in the U. S. Supreme Court, Goldey v. Morning News, 156 U. S. 518 and Conley v. Mathieson Alkali Works, 190 U. S. 406. In the first case it was held that in an action against a corporation neither incorporated nor doing business within a state and which has no agent or property therein, service of summons upon its president, temporarily within the jurisdiction cannot be recognized as valid by the Courts of any other government. This does not affect the present case as the director upon whom service was made was resident here. The other case relied on holds "Service in New York of summons upon a director of a foreign corporation who resides in N. Y. is not sufficient to bring the corporation into court where, at the time of service if *if* the corporation was not doing business in the State of New York." This case gives no reason beyond saying: "The principle announced in Goldey v. Morning News covers the case at Bar." This it did not do. This last case however cites with approval the following from Goldey v. Morning News "whatever effect a constructive service may be allowed in the courts of the same government it cannot be recog-

nized as valid by the courts of any other government." Under our decisions above quoted and upon which the plaintiff relied in bringing his action the service is sufficient for a valid judgment at least within our jurisdiction. What opportunity or method the
43 plaintiff may have to enforce his judgment is not before us now for consideration.

The other assignment of error is that while the Maryland Casualty Co. was a party (the court having found that it was a necessary party defendant) the Court allowed the reading of the plaintiff's amended complaint charging that company with liability to him, and subsequently on motion of defendant dismissed the action as to the Casualty Company under the ruling in Clark v. Bonsal 157 N. C. 270. In that case the plaintiff had attached the contract of insurance to his complaint. This case is on all fours with Wood v. Kincaid 144 N. C. 393 in which the contract was not set out as an exhibit to the complaint and it could not be ascertained by the Court till the plaintiff's evidence was in that it had no cause of action against the Maryland Casualty Co. Then *then* the action was dismissed as to the said Casualty Co. upon motion of the defendant. It did not appear upon the face of the complaint that the Casualty Company was not a necessary party and this could not be ascertained until the evidence of the plaintiff was in. Besides it does not appear how reading to the Court allegations in the complaint against another party, as to whom the nonsuit was afterwards taken, can have prejudiced this defendant. Even if read in the hearing of the jury the complaint was read to the Court only, and if the jury paid any attention to it at all, they knew that it was not evidence but merely the allegations of the plaintiff.

No error.

44 Dissenting Opinion filed by Walker, J., December 20, 1912, as follows:

Supreme Court of North Carolina, August Term, 1912.

#332. Alamance.

WILLIAMSON MENEFEE
v.
RIVERSIDE AND DAN RIVER COTTON MILLS.

WALKER, J. (dissenting):

This is an action for damages for personal injuries. The defendant entered a special appearance and moved to strike out the return of the service of the summons and dismiss the action, for the reason that "the defendant is a foreign corporation, not doing business in North Carolina and not domesticated, and has no agent upon whom service can be made and the service is invalid and does not amount to due process of law." The motion was overruled and the defendant excepted. The defendant then answered and the cause was tried

upon its merits. From the verdict and judgment the defendant appealed.

The Court found as a fact that "the defendant is a Virginia corporation and did not have at the commencement of this action and has not now, any office or place of business in this State, and has never engaged in business here; that it has never had a process-agent in this State nor been domesticated here; that T. B. Fitzgerald upon whom the summons was served, is a director of the defendant company and is a resident of this State, but he was not at the time of the service, nor at any time prior thereto, transacting the business of the company and held no office therein other than that of director, and that the defendant has no property in this State."

For the validity of such service, the plaintiff relies upon Cunningham v. Express Co., 67 N. C. 426, and several cases decided since, which, he says, sustain that contention. But in Conley v. Mathison Alkali Works, 190 U. S. it was held that: "Service in New York of a summons upon a director of a foreign corporation who resides in New York is not sufficient to bring the corporation into court, where, at the time of service, the corporation was not doing business in the State of New York."

We may add to the case just cited, which seems to be a con-
45 clusive authority, the following, which are just as much in point: O. W. Mut. Life Asso. v. McDonough, 204 U. S. 8 (51 L. Ed. 345); Kendall v. Am. Automobile Loom Co., 198 U. S. 477 (49 L. Ed. 1133); Goldey v. Morning News Co. (Gray, J.), 156 U. S. 518 (39 L. Ed. 517); Conley v. M. Alkali Works, 190 U. S. 406 (47 L. Ed. 1113); Barrow St. Co. v. Kans, 170 U. S. 100 (42 L. Ed. 964); Com. M. Life Ins. Co. v. Sprattley, (Peckham J.) 172 U. S. 602 (43 L. Ed. 569); St. Clair v. Cox, 106 U. S. 350 (27 L. Ed. 222); M. Construction Co. v. Fitzgerald, 137 U. S. 98 (34 L. Ed. 608); Steamship Co. v. Kane, 170 U. S. 100 (42 L. Ed. 964); Eldred v. Am. Pal. Car. Co., 103 Fed. Rep. 209.

In deference to these decisions of the highest court, we should hold and adjudge that the action be dismissed, as the cases are, at least substantially, alike in their facts.

Except in this State, the cases where it has been held that the service upon an officer of a non-resident corporation in a State other than that of its residence is required, it appeared that he was transacting business of the corporation or there was some other fact or circumstance which implied authority to receive service. It would seem to be at least fair and just that the officer upon whom service is made should be under some legal duty to make known the fact of service to the corporation, and not merely under a moral obligation to do so, or by charging him with the transaction of business in the State of service, the corporation should thereby have made him, at least impliedly, its representative in that State, under its laws, whose protection it has enjoyed, and thereby subjected itself to binding service upon him.

Brown, J. concurs in this dissent.

46 *Judgment.*

North Carolina Supreme Court, August Term, 1912.

No. 332. Alamance.

WILLIAMSON MENEFEE
v.
RIVERSIDE & DAN RIVER COTTON MILLS et al.

Judgment.

This cause came on to be argued upon the transcript of the record from the Superior Court of Alamance Count — upon consideration whereof this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here, that the opinion of the Court, as delivered by the Honorable Walter Clark, Chief Justice, be certified to the said Superior Court, to the intent that the judgment be affirmed.

And it is considered and adjudged further, that the defendants and surety do pay the costs of the appeal in this Court incurred, to-wit the sum of Twelve 65/100 dollars ($12.65) and execution issue therefor.

47 Supreme Court of North Carolina.

I, Jos. L. Seawell, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a true, correct and perfect copy of the transcript of the record and proceedings on file in this Court in the case of Williamson Menefee v. Riverside and Dan River Cotton Mills, Incorporated, and also of the opinion of the Court and the dissenting opinion, as appears from the files of this Court.

Given under my hand and seal of said Court at office in Raleigh on this the 5th day of May, 1913.

[Seal of the Supreme Court of the State of North Carolina.]

J. L. SEAWELL,
Clerk Supreme Court of North Carolina.

48 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of North Carolina, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof I hereunto subscribe my name, and affix the seal of said Supreme Court of North Carolina, in the City of Raleigh, this May 5, 1913.

[Seal of the Supreme Court of the State of North Carolina.]

J. L. SEAWELL,
Clerk Supreme Court of North Carolina.

Endorsed on cover: File No. 23,677. North Carolina Supreme Court. Term No. 169. Riverside and Dan River Cotton Mills, Incorporated, plaintiff in error, vs. Williamson Menefee, by his next friend, Mrs. Emma W. Menefee. Filed May 7th, 1913. File No. 23,677.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914

No. 169

RIVERSIDE AND DAN RIVER COTTON MILLS, INCORPORATED, PLAINTIFF IN ERROR

vs.

WILLIAMSON MENEFEE BY HIS NEXT FRIEND, MRS. EMMA W. MENEFEE

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

BRIEF OF PLAINTIFF IN ERROR

STATEMENT OF CASE

This cause originated in the Superior Court of Alamance County, North Carolina, and was instituted for the purpose of recovering damages on account of a personal injury alleged to have been suffered by the defendant in error while in the employ of plaintiff in error in its cotton mill in the City of Danville, Virginia.

Summons first issued against Dan River Cotton Mills; whereupon plaintiff in error entered a special appearance and moved to dismiss. (Transcript of record page 9).

Thereafter, to-wit, on June 1, 1910, summons issued against plaintiff in error by its correct corporate name; whereupon plaintiff in error entered a special appearance and moved to strike out the return of service for the reason that plaintiff in error was a foreign corporation not doing business in North Carolina and had not been domesticated and had no agent upon whom service could be made and for the reason that the service of summons was invalid and did not amount to due process of law. (Transcript of record pages 11 and 12).

In support of the foregoing motion made upon special appearance plaintiff in error filed the affidavit of its secretary and treasurer, H. R. Fitzgerald. (Transcript of record pages 12 and 13).

At May Term, 1911, of Alamance Superior Court the presiding judge found the following facts upon the above mentioned motion of plaintiff in error, made upon special appearance, to strike out the return of service of summons and dismiss the cause for want of due service of process:

1. That plaintiff in error was a foreign corporation.

2. That plaintiff in error did not have at the commencement of the action and had not then any office or place of business within the State of North Carolina and had never engaged in business in said state.

3. That plaintiff in error had never had a process agent in the state nor had it ever been domesticated therein.

4. That T. B. Fitzgerald, upon whom the several summonses against plaintiff in error were served, was a director of plaintiff in error resident in the State of North Carolina, but that he was not at the time of such service nor at any time prior thereto transacting business for plaintiff in error and that he held no office in plaintiff in error other than that of director.

5. That plaintiff in error had no property in the State of North Carolina. (Transcript of record page 22).

At said May Term, 1911, the presiding judge overruled plaintiff in error's motion made upon special appearance to strike out the service of process and dismiss the action; whereupon plaintiff in error excepted and its exception was duly noted. (Transcript of record page 23).

Thereafter, plaintiff in error having answered, the cause came on for trial before a jury and resulted in a verdict for defendant in error, whereupon judgment was rendered against plaintiff in error in the sum of eighteen hundred dollars (transcript of record pages 30 and 31); from which judgment an appeal was duly taken and prosecuted to the Supreme Court of North Carolina, in which court the judgment of the lower court was affirmed by a divided court, two associate justices concurring in the opinion delivered by the chief justice and two associate justices dissenting therefrom. (Transcript of record pages 35, 36, 37, 38 and 39.)

Thereafter, on the 9th day of April, 1913, plaintiff in error sued out a writ of error from this court to the Supreme Court of the State of North Carolina to the end that the judgment of the state court might be here reviewed. (Transcript of record page 3).

SPECIFICATION OF ERROR

The single point raised by this record and now urged for error is the action of the Supreme Court of North Carolina in holding sufficient in a personal action the service of original process (summons) upon a director of plaintiff in error resident in the State of North Carolina, although plaintiff in error is a corporation of the State of Virginia that has never domesticated in North Carolina nor done business nor had an office, property or process agent therein. The question involved was raised in the state trial court by motion made in apt time upon special appearance to dismiss for want of proper and sufficient service and because of the consequent absence of jurisdiction and want of due process of law. Upon appeal from the trial court to the Supreme Court of North Carolina the question was decided against plaintiff in error and this

writ of error is prosecuted to the state court for the purpose of securing a review in this court of the action of the state Supreme Court in that regard.

ARGUMENT

1. The state trial court was without jurisdiction of plaintiff in error for the reason that there was no proper or sufficient service upon it of process and consequently the judgment rendered upon the verdict of the jury constitutes the taking its property without due process of law.

Plaintiff in error has preserved its rights in the premises by appearing specially and moving to set aside the return of service and dismiss the action and of having the presiding judge find the facts and cause his findings to be entered of record. Its motion being overuled, it has excepted and caused its exceptions to be entered of record, thus preserving for review, first by the state Supreme Court and then by this Court, the question of jurisdiction involved in and dependent upon the sufficiency of the service of original process.

Goldey vs. Morning News, 156 U. S. 518; 39 Law. Ed. 517.

Conley vs. Mathieson Alkali Works, 190 U. S. 406; 47 Law. Ed. 1113.

Kendall vs. Loom Company, 198 U. S. 477; 49 Law, Ed. 1133.

Guilford County vs. Georgia Company, 109 N. C., 310.

Cooper vs. Wyman, 122 N. C., 788.

Jester vs. Steam Packet Company, 131 N. C., 54.

If there could be any doubt as to whether the federal question of "due process of law" involved in this record was properly raised in the state court, the all-sufficient answer is that the Supreme Court of North Carolina held that the federal question was made before it according to its practice and determined it and, this being true, this court will regard the question as duly made.

Miederich vs. Lauenstein, 232 U. S. 236; 58 Law. Ed.

2. No judgment of a court is due process of law, if rendered without jurisdiction in the court or without notice to the party.

Scott vs. McNeal, 154 U. S. 34; 38 Law. Ed. 896, 901.
Old Wayne Mut. L. Asso. vs. McDonough, 204 U. S. 8, 15; 51 Law. Ed. 345, 348.

In view of the decisions of this court in *Conley vs. Mathieson Alkali Works*, supra, and *Kendall vs. Loom Company*, supra, it is unnecessary to prolong argument or multiply authorities.

The *Conley case* originated in the Supreme Court of the State of New York, the plaintiff being a citizen of that state, the defendant a corporation chartered under the laws of the State of Virginia. On defendant's motion the case was moved to the appropriate federal court where defendant moved to set aside the summons and service as null and void. The facts found were that defendant had once done business in New York, but had ceased to do so before the institution of the suit, and that the summons was served upon two directors of defendant resident in New York. Thereupon the circuit court set aside the service of summons and declared it null and void and, upon writ of error from this court, the judgment of the lower court was affirmed.

The facts as to the service of summons in the case at bar are identical with those in the *Conley case* except that here plaintiff in error had *never* done business in North Carolina and the service was upon *one* director instead of two.

In the *Kendall case* the service was upon the treasurer resident in the state in which the suit was brought of a foreign corporation which had never done business in that state and was held insufficient to confer jurisdiction.

3. As in the *Conley case* the New York State Supreme Court held that, the service being in accordance with the provisions of the pertinent state statute, it was sufficient, so in the case at bar the North Carolina State Supreme Court held likewise. The North Carolina statute provides:

"The summons shall be served by delivering a copy thereof in the following cases:

> "1. If the action be against a corporation, to the to the president or other head of the corporation, secretary, cashier, treasurer, director, managing or local agent thereof; provided, that any person receiving or collecting money within this state for or on behalf of any corporation of this or any other state or government shall be deemed a local agent for the purpose of this section; but such service can be made in respect to a foreign corporation only when it has property within this state or the cause of action arose therein or *when the plaintiff resides in the state* or when such service can be made within the state personally upon the president, treasurer, or secretary thereof."

Revisal of 1905 of North Carolina, section 440, subsection 1.

Menefee vs. Cotton Mills, 161 N. C., 164.

In the *Conley case* this court held the service in accordance with the provisions of the New York statute, whose provisions are similar to those of the North Carolina statute invalid and insufficient to confer jurisdiction.

4. In the opinion of the majority of the Supreme Court of North Carolina it seems to be recognized that the service is insufficient under the decisions of this court; for the chief justice, speaking for the majority and referring to the *Conley case*, seeks to justify the action of the court by saying:

> "This last case, however, cites with approval the following from *Goldey vs. Morning News:* 'Whatever effect a constructive service may be allowed in the courts of the same government, it cannot be recognized as valid by the courts of any other government.'"

Upon this theory the state court upheld the state statute, ignoring and denying the protection afforded the plaintiff in error by the fourteenth amendment to the federal constitution.

However, as said by the late Mr. Justice Harlan in Old Wayne Mut. L. Asso. vs. McDonough, supra:

> "No state can by any tribunal or any representative render nugatory a provision of the supreme law. And if the conclusiveness of a judgment or decree in a court of one state is questioned in a court of another government, federal or state, it is open under proper averments to inquire whether the court rendering the decree or judgement had jurisdiction to render it."

The foregoing is certainly as applicable to a judgment or decree directly as to one collaterally questioned.

Upon the principles stated and in strict accordance with the doctrine enunciated in the leading case of *Pennoyer vs. Neff*, 95 U. S., 714 ; 24 Law. Ed. 565, which has been followed and approved in well-nigh numberless cases both in the federal and state courts, including the Supreme Court of the State of North Carolina, and under the direct authority of the *Conley* and *Kendall* cases, it is respectfully submitted that there is error in the action of the Supreme Court of North Carolina in holding the state statute constitutional and the service of summons in the case at bar valid and sufficient to confer jurisdiction.

Respectfully submitted,

F. P. HOBGOOD, Jr.,
Counsel for Plaintiff in Error

RIVERSIDE AND DAN RIVER COTTON MILLS *v.* MENEFEE.

ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

No. 169. Argued March 4, 1915.—Decided April 12, 1915.

To condemn without a hearing is repugnant to the due process clause of the Fourteenth Amendment.

Courts of one State cannot without violating the due process clause extend their authority beyond their jurisdiction so as to condemn the resident of another State when neither his person nor his property is within the jurisdiction of the former. *Pennoyer* v. *Neff*, 95 U. S. 714.

A corporation, no more than an individual, is subject to be condemned without a hearing in violation of the due process clause; and the mere fact that one who is a director, but who is not a resident agent, of a foreign corporation resides within a State does not give the courts

of that State jurisdiction over a corporation which is not doing business and has no resident agent therein. This applies to a judgment even though by implied reservation its effect is limited to the confines of the State.

Wherever a provision of the Constitution is applicable the duty to enforce it is all embracing and imperative. Due process cannot be denied in fixing, by judgment, against one beyond jurisdiction of the court, an amount due even though the enforcement of the judgment be postponed until execution issue.

The fact that a judgment rendered without due process of law may not, under the full faith and credit clause, be enforced in another State, affords no ground for the court entering a judgment without jurisdiction in violation of due process of law.

THE facts, which involve the validity under the due process clause of the Fourteenth Amendment of a judgment against a foreign corporation not doing business within the State, are stated in the opinion.

Mr. F. P. Hobgood, for plaintiff in error.

No appearance for defendant in error.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

The plaintiff in error, a corporation called hereafter the Riverside Mills, was sued in North Carolina by the defendant in error, a resident of that State, to recover for personal injuries alleged to have been suffered by him while working in Virginia as an employé in a cotton mill operated by the Riverside Mills. The summons directed to the corporation was returned by the sheriff served as follows: "by reading and leaving a copy of the within summons with Thos. B. Fitzgerald, a director of the defendant corporation." The Riverside Mills filed a special appearance and motion to dismiss in which it prayed for the striking out of the return of service for the reason that

"the defendant is a foreign corporation, not doing business in North Carolina, and has not been domesticated and has no agent upon whom service can be made and that the service of the summons is invalid and does not amount to due process of law as against this defendant." This motion was supported by an affidavit of a person styling himself secretary and treasurer of the company stating the facts to be that the corporation was a Virginia one, had its place of business in Virginia, carried on its factory there, had never transacted business in North Carolina, had no property there and that the person upon whom service was made, although he was a director of the corporation and was a resident of North Carolina, had never transacted any business in that State for the corporation. The motion to strike out was refused although the court found the facts to be in accordance with the statement made in the motion and in the affidavit. The defendant answered. There was a trial to a jury and despite the insistence upon the invalidity of the summons, there was a verdict against the Riverside Mills to which it prosecuted error to the Supreme Court of North Carolina. For the purpose of that review an agreed case was made in which the facts were found to be as stated in the affidavit supporting the motion to strike out and in considering the case the court below stating the same facts reviewed the ruling of the trial court upon that premise.

Coming first to consider the statutes of North Carolina and various decisions of that State construing and applying them, the court held that as the plaintiff was a resident of the State and the director upon whom the summons was served also resided in the State, the summons was authorized, wholly irrespective of whether the foreign corporation had transacted any business in the State, had any property in the State, or whether the resident director was carrying on business for the corporation in North Carolina or had done so. The court came then to

consider decisions of this court which it deemed related to the question under consideration, for the purpose of testing how far the due process clause relied upon operated from a Federal point of view, that is, the Constitution of the United States, to dominate and modify, if at all, the state rule. In doing so reference was made to the ruling in *Goldey* v. *Morning News*, 156 U. S. 518, and *Conley* v. *Mathieson Alkali Works*, 190 U. S. 406, in the first of which it was held that there was no basis for asserting jurisdiction as the result of service of process on the president of a foreign corporation in a State where he was temporarily present and where the corporation did no business, had no property and where the president was transacting no business for the corporation in the State where he was served; and in the second of which under like conditions the same conclusion was reached where the service was made on a director of a foreign corporation residing in the State where the suit was brought. After briefly reviewing these cases, which were both decided in courts of the United States on removal from state courts, and directing attention to the fact that in the *Goldey Case* it was observed, "Whatever effect a constructive service may be allowed in the courts of the same government, it cannot be recognized as valid by the courts of any other government," and that the same observation was reiterated in the opinion in the *Conley Case*, it was in effect decided that from the point of view of the Constitution of the United States the due process clause relied upon did not control the state law so as to prevent the taking of jurisdiction under the summons for the purpose of entering a judgment, whatever effect the due process clause might have upon the power to enforce the judgment when rendered. The court said: "Under our decisions above quoted and upon which the plaintiff relied in bringing his action the service is sufficient for a valid judgment at least within our jurisdiction." Concerning the judgment of affirmance

which it awarded, the court further said: "What opportunity or method the plaintiff may have to enforce his judgment is not before us now for consideration." Two members of the court dissented upon the ground that the decisions of this court which were referred to in the opinion of the court clearly established that there was no power to render the judgment, and that the same conclusion was required as the result of the following additional cases in this court: *Old Wayne Life Association* v. *McDonough*, 204 U. S. 8; *Kendall* v. *American Automatic Loom Company*, 198 U. S. 477; *Connecticut Mutual Life Insurance Company* v. *Spratley*, 172 U. S. 602; *St. Clair* v. *Cox*, 106 U. S. 350; *Barrow Steamship Company* v. *Kane*, 170 U. S. 100; *Construction Co.* v. *Fitzgerald*, 137 U. S. 98. To the judgment thus rendered (161 N. Car. 164) this writ of error was prosecuted.

Was error committed in deciding that consistently with the due process clause of the Fourteenth Amendment there was jurisdiction to enter against the defendant a money judgment, even although by implied reservation its effect was limited to the confines of the State and the extent to which the judgment as so rendered was susceptible of being executed was left open for future consideration when the attempt to enforce the judgment would give rise to the necessity for its solution?

That to condemn without a hearing is repugnant to the due process clause of the Fourteenth Amendment needs nothing but statement. Equally well settled is it that the courts of one State cannot without a violation of the due process clause, extend their authority beyond their jurisdiction so as to condemn the resident of another State when neither his person nor his property is within the jurisdiction of the court rendering the judgment, since that doctrine was long ago established by the decision in *Pennoyer* v. *Neff*, 95 U. S. 714, and has been without deviation upheld by a long line of cases, a few of the leading

ones being cited in the margin.[1] And that a corporation no more than an individual is subject to be condemned without a hearing or may be subjected to judicial power in violation of the fundamental principles of due process as recognized in *Pennoyer* v. *Neff*, is also established by the cases referred to and many others.

Whatever long ago may have been the difficulty in applying the principles of *Pennoyer* v. *Neff* to corporations, that is, in determining when, if at all, a corporation created by the laws of one State could be sued in the courts of another sovereignty, because of the conception that as an ideal being a corporation could not migrate and its officers in going into another sovereignty did not take with them their power to represent the corporation, such difficulty ceased to exist with the decision of this court rendered more than thirty years ago in *St. Clair* v. *Cox*, 106 U. S. 350, which, together with the leading cases which have followed it, have been already referred to. And the doctrine which they uphold with virtual unanimity has been upheld by the courts of last resort of most of the States in such a number of cases as to render their citation unnecessary. Without restating the *St. Clair Case* or the leading cases which have followed and applied it, we content ourselves with saying that it results from them that it is indubitably established that the courts of one State may not without violating the due process clause of the Fourteenth Amendment, render a judgment against a corporation organized under the laws of another State where such corporation has not come into such State for the purpose of doing business therein, or has done no business therein, or has no property therein, or has no

[1] *St. Clair* v. *Cox*, 106 U. S. 350; *Freeman* v. *Alderson*, 119 U. S. 185; *Wilson* v. *Seligman*, 144 U. S. 41; *Scott* v. *McNeal*, 154 U. S. 34; *Caledonian Coal Co.* v. *Baker*, 196 U. S. 432; *Haddock* v. *Haddock*, 201 U. S. 562; *Clark* v. *Wells*, 203 U. S. 164; *Hunter* v. *Mutual Reserve Life Ins. Co.*, 218 U. S. 573.

qualified agent therein upon whom process may be served; and that the mere fact that an officer of a corporation may temporarily be in the State or even permanently reside therein, if not there for the purpose of transacting business for the corporation or vested with authority by the corporation to transact business in such State, affords no basis for acquiring jurisdiction or escaping the denial of due process under the Fourteenth Amendment which would result from decreeing against the corporation upon a service had upon such an officer under such circumstances. And this makes clear why there is no ground for assuming that there was conflict between the ruling in *Goldey* v. *Morning News, supra,* where it was held that jurisdiction could not be acquired over a corporation of one State in another and different State by service on the president of the corporation temporarily in such State, and the ruling in *Conley* v. *Mathieson Alkali Works, supra,* that jurisdiction could not be acquired under the same circumstances by service on a director permanently residing in the other State, since both cases were rested upon the basis that not the character of the residence but the character and power of the one served as an agent of the corporation, was the test of the right to acquire jurisdiction.

It is self-evident that the application of these settled principles establishes the error of the decision of the court below unless it be that the distinction upon which the court acted be well founded, that is, that the enforcement of due process under the Fourteenth Amendment was without influence upon the power to render the judgment since that limitation was pertinent only to the determination of when and how the judgment after it was rendered could be enforced. But this doctrine while admitting the operation of the due process clause, simply declines to make it effective. That is to say, it recognizes the right to invoke the protection of the clause but denies its re-

medial efficiency by postponing its operation and thus permitting that to be done which if the constitutional guarantee were applied would be absolutely prohibited. But the obvious answer to the proposition is that wherever a provision of the Constitution is applicable the duty to enforce it is imperative and all-embracing and no act which it forbids may therefore be permitted. If the suggestion be that although under the jurisdiction which was exerted in form a money judgment was entered, as no harm could result until the execution, therefore no occasion for applying the due process clause arose, it suffices to say that the proposition but assumes the issue for decision since the very act of fixing by judicial action without a hearing a sum due, even although the method of execution be left open, would be in and of itself a manifestation of power repugnant to the due process clause.

It is however, unnecessary to pursue the subject from an original point of view, since in *Pennoyer* v. *Neff*, *supra*, among other things it was said that "proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law." And see *Mutual Life Insurance Co.* v. *Spratley*, 172 U. S. 602, where these principles were treated as self-evident. It is true that in most of the decided cases questions concerning judgments rendered without a hearing under the circumstances here disclosed have arisen from attempts to enforce such judgments in jurisdictions other than the one wherein they were rendered, presumably because the defense of want of due process was not made until the judgments had been entered and an effort to enforce them was made. But the fact that because unobservedly or otherwise judgments have been rendered in violation of the due process clause and their enforcement has been refused under the full faith and credit clause affords no ground for

refusing to apply the due process clause and preventing that from being done which is by it forbidden and which if done would be void and not entitled to enforcement under the full faith and credit clause. The two clauses are harmonious and because the one may be applicable to prevent a void judgment being enforced affords no ground for denying efficacy to the other in order to permit a void judgment to be rendered.

Reversed.